

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

ERIC A. WILSON, )  
Petitioner, )  
v. ) Nos. 3:10-CR-75-RLJ-HBG-1  
United States of America, ) 3:14-CV-279-RLJ  
Respondent. )

**MEMORANDUM AND ORDER**

On June 19, 2014, Petitioner filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 [Docs. 34, 36].<sup>1</sup> The petition relies on *Johnson v. United States*, 135 S. Ct. 2551 (2015), in which the Supreme Court held that the residual provision of the Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e), was unconstitutionally vague [*Id.* (suggesting that Petitioner’s prior aggravated burglary conviction only qualified as a violent felony under the now-defunct residual provision)]. On August 15, 2016, the United States responded with the suggestion that Petitioner’s entitlement to relief hinges on whether Tennessee aggravated burglary remains susceptible to categorization as a violent felony under the ACCA enumerated offense clause [Doc. 40]. Noting the Sixth Circuit has agreed to address that very issue *en banc* in *United States v. Stitt*, 646 F. App’x 454 (6th Cir. 2016), the United States requests that the Court defer resolution of Petitioner’s § 2255 motion pending the Sixth Circuit

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<sup>1</sup> On February 11, 2016, Federal Defender Services of Eastern Tennessee (“FDS”) was appointed for the limited purpose of reviewing the case to determine whether or not Petitioner is eligible for collateral relief based upon *Johnson v. United States*, 135 S. Ct. 2551 (2015). See E.D. Tenn. SO-16-02 (Feb. 11, 2016). Consistent with that appointment, FDSET supplemented its earlier-filed petition—which relied on *Descamps v. United States*, 133 S. Ct. 2276 (2013) [Doc. 34], with a claim based on *Johnson v. United States*, 135 S. Ct. 2551 (2015) [Doc. 36].

decision [*Id.*]. Petitioner did not file a reply and the time for doing so has now passed. E.D. Tenn. L.R. 7.1, 7.2. This Court interprets the absence of any response as a waiver of objection.

“The question whether to stay a case pending a potentially dispositive decision in an appellate court is a pre-trial matter committed to the sound discretion of the [court].” *United States v. Johnson*, No. 3:11-CR-48, 2016 WL 4035187, at \*1 (S.D. Ohio July 28, 2016). In light of the absence of a response in opposition and because the *Stitt* decision will likely clarify whether Tennessee aggravated burglary remains susceptible to categorization as a violent felony after the Supreme Court’s decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016), the Court finds that a stay is appropriate under the circumstances of the instant case.

For the reasons outlined above, the request for a stay [Doc. 40] is **GRANTED** and the action [E.D. Tenn. Case No. 3:14-CV-279-RLJ] is **STAYED** pending issuance of the Sixth Circuit’s *en banc* decision in *Stitt*. The parties are **DIRECTED** to file a joint status report within **thirty (30) days** of that decision.

**IT IS SO ORDERED.**

ENTER:

s/ Leon Jordan  
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United States District Judge